

Department of Veterans Affairs

§ 42.2

AUTHORITY: Pub. L. 99-509, secs. 6101-6104, 100 Stat. 1874, to be codified at 31 U.S.C. 3801-3812.

SOURCE: 53 FR 16710, May 11, 1988, unless otherwise noted.

§ 42.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99-509, 6101-6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801-3812. Section 3809 of title 31 U.S.C., requires each authority head, such as the Secretary of Veterans Affairs, to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part:

(1) Establishes and provides the only administrative procedures and actions for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 42.2 Definitions.

For the purposes of this part, the following definitions apply:

ALJ means an Administrative Law Judge in the Department of Veterans Affairs pursuant to 5 U.S.C. 3105 or detailed to the Department of Veterans Affairs pursuant to 5 U.S.C. 3344.

Benefit means, in the context of statement, anything of value, including, but not limited to, any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the Department of Veterans Affairs for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the Department of Veterans Affairs or to a party to a contract with the Department of Veterans Affairs—

(1) For property or services if the United States—

(i) Provided the property or services;

(ii) Provided any portion of the funds for the purchase of the property or services; or

(iii) Will reimburse the recipient or party for the purchase of the property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse the recipient or party for any portion of the money paid on the request or demand; or

(iii) Made to the Department of Veterans Affairs which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 42.7 of this part.

Defendant means any person alleged in a complaint under § 42.7 of this part to be liable for a civil penalty or assessment under § 42.3 of this part.

Government means the United States Government.

Individual means a natural person.

Initial Decision means the written decision of the ALJ required by § 42.10 or § 42.37 of this part, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of Veterans Affairs or an officer or employee of the Office of the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

Knows or has reason to know means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

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Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made*, shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association or private organization and includes the plural of that term.

Representative means any person designated by a party in writing.

Reviewing official means the General Counsel of the Department of Veterans Affairs or designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official;

(b) Not employed in the organization unit of the Department of Veterans Affairs in which the investigating official is employed; and

(c) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

Secretary means the Secretary of Veterans Affairs.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the Department of Veterans Affairs, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under the contract or for the grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under the contract or for the grant, loan, or benefit.

[53 FR 16710, May 11, 1988, as amended at 54 FR 34988, Aug. 23, 1989]

§ 42.3 Basis for civil penalties and assessments.

(a) *Claims*. (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making the statement has a duty to include the material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,500 for each claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the Department of Veterans Affairs, or to a recipient or party when such claim is actually made to an agency, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Department of Veterans Affairs, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether the property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of the claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages by the Government because of the claim.

(b) *Statements*. (1) Except as provided in paragraph (c) of this section, any